



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

File: LIN 00 032 52323 Office: Nebraska Service Center

Date: AUG 22 2000

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER: [REDACTED]

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prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

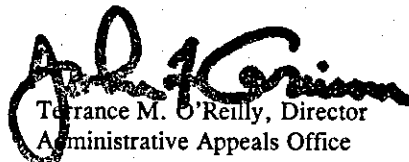
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations for appeal. The appeal will be sustained.

The petitioner is an agent and broker of fish products. It seeks to employ the beneficiary as a buyer's representative for a period of three months. The certifying officer of the Department of Labor declined to issue a labor certification because there is no basis for making findings related to the availability of U.S. workers since no U.S. workers will have the relevant experience of the Japanese market.

8 C.F.R. 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made. 8 C.F.R. 214.2(h)(6)(iv)(E) states that a petition not accompanied by a temporary labor certification must be accompanied by countervailing evidence from the petitioner that addresses the reasons why the Secretary of Labor could not grant a labor certification.

Upon review, the record was found to contain sufficient countervailing evidence to show that qualified workers in the United States are not available, the employment policies of the Department of Labor have been observed, and that the position offered is temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

**ORDER:** The appeal is sustained.